

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE MERCK & CO., INC.,
VYTORIN/ZETIA SECURITIES
LITIGATION

Hon. Dennis M. Cavanaugh

ORDER

Civil Action No. 08-2177 (DMC)(JAD)

IN RE SCHERING-PLOUGH CORP.:
ENHANCE SECURITIES LITIGATION:

Civil Action No. 08-397 (DMC)(JAD)

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon a letter from Lead Counsel for Lead Plaintiffs, requesting the Court's approval of proposed orders which approve the dissemination of class certification notices in each of the above-captioned actions. (Dec. 19, 2012, ECF Nos. 266, 331). After considering the submissions of each of the parties, and based upon the following;

WHEREAS Defendants believe that the dissemination of class notice should be stayed until after three Rule 23(f) petitions, currently pending before the United States Court of Appeals for the Third Circuit, have been resolved;

WHEREAS Fed. R. Civ. P. 23(f) expressly provides that an appeal thereunder "does not stay proceeding in the district court unless the district judge or the court of appeals so orders;"

WHEREAS Lead Counsel for Plaintiffs have anticipated the potential for the Third Circuit to grant Defendants' Rule 23(f) petitions, and accordingly added appropriate language in

the proposed class notices which apprise absent class members of Defendants' Rule 23(f) petitions and alerts them to the possibility that the Class definition may change as a result;

WHEREAS Lead Counsel for Lead Plaintiffs have agreed to pay the expense of issuing any necessary modified notices, should the Third Circuit grant Defendants' Rule 23(f) petition and modify the Class definitions;

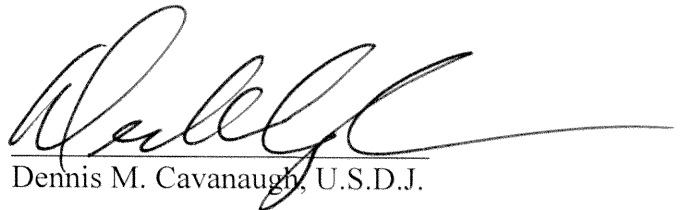
WHEREAS the Court sees no unfair prejudice to the Defendants in allowing class notice to be sent during the pendency of a 23(f) petition, and feels that dissemination is warranted at this time, given the imminence of trial;

WHEREAS Defendants' further argue that Paragraph 4 of the proposed orders should be revised, as Defendants do not have records identifying shareholders who held stock through banks and brokers as nominees in street name;

WHEREAS the Court, recognizing that it is common practice for banks or brokerages to hold shares of common stock in street value, agrees with Defendants' proposed changes to Paragraph 4;

IT IS on this 27 day of December 2012;

ORDERED that the Court approves the proposed class notice and its dissemination, subject to Lead Plaintiffs inclusion of modified language provided by Defendants as to Paragraph 4.


Dennis M. Cavanaugh, U.S.D.J.

Original: Clerk's Office
cc: Hon. Joseph A. Dickson, U.S.M.J.
All Counsel of Record
File